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PERPETUAL PEACE AND THE DOCTRINE OF NEUTRALITY.

JAMES CREED MEREDITH.

REPLYING to an interpellation in the Spanish Chamber on the 28th of January last, regarding naval bases, Señor Dato, the prime minister, is reported to have said that he was glad that all nations had respected Spanish neutrality. Anything implying sympathy with any of the belligerents would create difficulty for the government. They wanted their voice to be heard when peace was concluded. On that account they were observing strict neutrality.—These remarks would seem to suggest that the Spanish Prime Minister is, like so many others, possessed of the peculiar notion that there is something dignified and even meritorious in the position of neutrality, and that in remaining neutral a nation is to be regarded as obeying some high call of duty. A nation, forsooth, that has stood aloof while every known principle of international law was being violated, and that has refrained from expressing the slightest concern in the ultimate issue of the struggle and avoided indicating the least sympathy with any belligerent however outraged, is entitled to be heard with particular respect on the conclusion of peace—as it comes forward, clothed with the dignity of unsullied neutrality, with a superior air suggesting terms to those who are covered with the dust and blood of battle.

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Such views are, however, too repugnant to common sense, too obviously distorted, and too irritating to our sense of justice, to afford a suitable text for a temperate discussion of the extent to which the attitude of neutrality deserves to be respected. It is better to deal with the problem as it arises at the point at which philosophical and political speculation comes into contact with the strict legal treatment of principles of international law.

International law does not recognise a duty, or even a right on the part of a state to remain neutral while other states are engaged in war. But neutrality may be professed on the one side and admitted on the other, and in that case international law defines the terms and conditions upon which it is to be preserved and respected.

The law of neutrality, and even a word to express that relation, is of comparatively modern origin. "According to the laws of war, observed even by the most civilised nations of antiquity, the right of one nation to remain at peace, whilst the neighbouring nations were engaged in war, was not admitted to exist. He who was not an ally was an enemy; and as no intermediate relation was known, so no word had been invented to express such a relation."1 But "Little by little a third attitude became recognised as possible and legitimate; and its maintenance has gradually been transformed into a duty by the jealousy of belligerents, whose anxiety to deprive their enemy of advantages which the preference of the neutrals might give to him has been helped by the equal anxiety of neutrals to continue their habits of trade and intercourse."2

The code or rules which has grown up affecting states in this new relation involves a compromise between conflicting interests, and there are admittedly "two broadly divided tendencies of opinion as to its right basis, of which one prefers the interests of the neutral and the other those of belligerents." But it is beyond the province of the

¹ Wheaton, International Law, p. 549.

² Hall, Treatise on International Law, p. 75.

³ Ibid, p. 76.

international lawyer to settle precedence between these conflicting interests. "He must leave to moralists and to statesmen the task of deciding which of the two are the more worthy of encouragement, and therefore which theoretic tendency is to be preferred."

But the theorist is not limited to the consideration of the problem from the precise point of view from which it arises for the international lawyer. It is just because he has a peculiar point of view of his own that he is a theorist and not an international lawyer. In the form in which the question is presented the only interests that appear to be involved are those of neutrals and belligerents respectively. But on what ground is the theorist to prefer one of these interests to the other? He must enquire what is the dominant interest intended to be served by the existing regulations as to neutrality, and, having decided this, he must consider how far the promotion of that interest tends to promote the essential purposes of international law and the organisation of the human race as a society of nations. Approaching the problem from this point of view, he may come to a theoretical conclusion on considerations which treat the relative precedence of the interests of neutrals and belligerents as of merely secondary importance.

The immediate interest which provisions in respect of neutrality are intended to serve is the localisation of war. That is obvious. The law of neutrality is meant to facilitate nations keeping out of any war that arises, or, in other words, to confine the war to as few belligerents as possible, that is to say, to localise it. And, no doubt, this seems at first sight a most laudable object. Assuming that war is in itself a calamity, it would appear almost self-evident that the primary aim of diplomacy should be to avert war, and, failing this, that its secondary aim should be as far as possible to confine its extent. And where diplomacy has no sinister object in view, it does in general aim at localising war when it cannot avert it alto-

⁴ Ibid, p. 76.

gether. The law of neutrality as it stands at present simply gives effect, or is intended to give effect, to that general policy.

Now, if the wisdom of that policy is not to be impugned, the theorist is bound to regard the rights of neutrals as of paramount importance. But there is one fact that must give us pause before accepting a merely superficial view. If the localisation of war is part of the settled policy of diplomacy, then nature, in the sense of the inevitable course of human progress, and diplomacy, are striving in opposite directions. The growing complexity, involution and ever-increasing ramifications of trade interests. not to mention less potent influences arising out of the general social and political organisation of the human race, make the localisation of war more and more difficult. For decades past diplomacy has been striving to localise any trouble that might arise in the Far East or the Near But surely and steadily the Far East and the Near East have, so to speak, been drawing nearer, and the affairs of East and West have been becoming more inextricably involved. Despite all efforts at localisation, the present war has attained the most imposing scale of terrible grandeur yet witnessed in the world's history. Further. this war has brought home to us more than any previous war the extent to which neutrals, however much their neutrality is respected, must become affected by a great war. And in the aftermath of the war most of them will probably suffer as severely as the belligerents. It is easy, then, to conceive a stage at which the localisation to any extent of a great war might become impossible owing to those nations not primarily concerned finding it to their interest to combine and step in at once to assist one side or the other for the purpose of bringing the war to as speedy a termination as possible. If this is not a groundless speculation, nature must eventually get the better of diplomatists. Which, then, is the more profoundly wise, nature or diplomacy?

Diplomacy, by encouraging neutrality on the part of

the nations not primarily interested in a dispute, is in effect simply striving to make all codes of international law so much waste paper, or, at least, to make them so the moment any state chooses to disregard them. tional law thus becomes obliged to admit the false and self-destructive doctrine that it is not concerned with the origin of any dispute, even though the origin be a flagrant breach of the most fundamental principles of international law itself. The disputants are relegated to the primitive right of self-redress, and the duty of all other states is simply to keep the ring. Rights are admitted, but the weaker state is left to enforce its right against the stronger. This is the meaning of the contention of some Germans that even the most solemn treaties are mere waste paper. The statement is not a statement of things as they ought to be, but a trenchant criticism of the existing basis and sanctions of international law. Properly read it should be interpreted as a denunciation of an attitude on the part of international law which nature is intent on making more and more untenable. For it is clear that the contention would make international law a transparent farce, and that it is, therefore, repugnant to the universal interest which the existence of international law is intended to serve. to adopt the Kantian phraseology, the maxim that underlies the contention were universalised, it would be seen to be self-contradictory. Hence it follows that if all states —the disinterested as well as those that are primarily interested in a dispute—could be drawn into every war, if, that is to say, war could in every case be universalised, there would be a reasonable hope of securing a steady preponderance of might in favor of right. In this way the authority of international law would be restored, and to that extent the tendency of war if once started to become universal operates as a tendency to prevent it altogether, whereas all efforts to localise war are only efforts to perpetuate it.

International lawyers, pressed by the difficulties of the position that international law is not concerned in any way

with the origin of disputes that lead to war, refer vaguely to the sanction of general international opinion. who is to express this opinion and how is it to be voiced effectively? The discussion, already referred to, in the Spanish Chamber, is an interesting commentary on the futility of any such sanction. Even an expression of sympathy with any of the belligerents would create difficulties for the government! However, Señor Soriena, replying to Señor Dato, complained that the parties of the right had not in fact observed the same strictly impartial attitude as those of the left. The former had left cards at the German Embassy. "We" he declared (with praiseworthy spirit), "shall oppose cards to cards, and attitude to attitude." It has not since been reported whether Spain has actually been plunged into the threatened war of opposing cards and confronting attitudes, but, if it has, we dare not hope that the result of its bloodless battles will do much to shape the destinies of Europe. Yet the absurdities of such mock heroics indicate the fullest extent to which the expression of international opinion, as the ultimate sanction of international law, can be pressed within the strict limits of neutrality.

Speaking of what used to be known as an "unjust," or unprincipled, enemy, Kant, who, however, seems to have regarded the right of neutrality as an inherent right of nations, says: "This is one whose determination publicly expressed, either by word or deed, betrays a maxim which, if reduced to a universal rule, would preclude the possibility of a state of peace among nations, and inevitably perpetuate a state of lawless nature. This is seen in the violation of treaties, a matter which may be presumed to affect the interest of all nations. For it puts their freedom in peril, and compels them to combine against such wrongdoing and deprive the enemy of his power of injuring them." ⁵ But if the law of neutrality is made unduly favorable to neutrals, there must always be a probability that some of those nations whose freedom is imperilled in this way

⁵ Rechtslehre, § 60.

will, from the selfish motive of pursuing their trade interests, refuse to join in the combination, because they suppose that those who have already joined will be able, though perhaps only after an exhaustive war, to win the battle of freedom for the world. Let us therefore rejoice to observe a deeply moving tendency in the logic of things to make neutrality intolerable. Nature is making broad its shoulders to sustain the rights of nations.

Besides attempting to rob international law of its appropriate sanction—the force of disinterested nations whose sympathies would naturally tend to be enlisted on the side of right-diplomacy, in seeking to localise war, is in effect attempting to shut out the influence of all states whose primary desire is for peace. The moment a threatening war-cloud appears on the horizon, every state whose immediate interests are not likely to be affected stands aloof for fear of being drawn into the dispute, and begins to prepare ostentatiously for the due observance of an attitude of strict neutrality. Then, if hostilities actually break out, it is considered an unfriendly act for any of the powers that are pacifically inclined to intervene until the war has run a normal course and it has become clear that the spoils are to go to the victor and the original merits of the dispute to be totally disregarded. Finally, as a reward for having done nothing in the interests of peace or to promote the meritorious settlement of the dispute. the neutral states expect to be heard with respect as to the terms of peace, and even occasionally claim a right to participate in any injustice that may be perpetrated. But if nature could only defeat the aims of diplomacy, and make neutrality during a long war more onerous than belligerency during a short war, she would have set up the most potent and effective influence in favor of peace.

If we wish for more light on this question of whether the aim of nature or that of diplomacy is the wiser, we have only to consider how matters would stand if the ideal order of things were to exist. For that purpose we may reasonably be excused from debating the point as to whether or not reason really furnishes us with any true ideal or norm for our guidance. It is sufficient that where such an ideal or norm is assumed, it is always taken to be a systematic and legal relation of all states, determined by some international council having the support of a concert of the powers, as the result of which war would be a continually averted calamity.

It is immediately evident that the observance of an attitude of neutrality is inconsistent with the existence of an effective international council. For such a council could not make itself effective otherwise than by means of some sort of international police, or by means of the concerted actions of the powers not primarily concerned in the dispute—what Mr. Roosevelt calls an international posse comitatus. The notion of coercing great powers by means of an international police force seems somewhat whimsical, but, in any case, powers contributing their contingents to that force could hardly be considered neutral. Concerted action by the powers is, of course, the direct antithesis of their neutrality. So neutrality is clearly repugnant to the ideal order of things.

This reflection, that the result which natural tendencies are striving to attain is one essentially bound up with the ideal order of things, ought of itself to win an attentive hearing for the voice of nature. But at this point we encounter a new enemy to progress. Pacificism comes forward and plays into the hand of diplomacy, contending that we must continue our efforts to localise war, and to prevent distinterested nations being drawn into any dispute, until they have first managed to get their international council established, and a tribunal is set up to decide every case according to the merits and direct the posse comitatus how to act. The proper place for dealing with the sophisms that underlie this notion will come in due course if we turn to the general and vital question of how the aim of nature may best be promoted—supposing that it is to be preferred to the policy by which existing diplomacy is seeking to influence the trend of international law.

As already remarked, even the existing law of neutrality exhibits two conflicting tendencies, one of which prefers the rights of neutrals and the other that of belligerents. What is more, important questions have already arisen between the belligerents and neutral states, and, in the course of time, other important questions will no doubt arise, the determination of which will depend upon the relative precedence given to those two conflicting tenden-Here, then, is a step forward on the road of progress that can be taken at once. The rights of belligerents can be preferred to those of neutrals in the determination of every dispute which is not immediately determinable by reference to existing treaties and conventions or to any firmly established principles of international law. The interests of neutrals, in other words, can be made to give way to those of belligerents on all debatable ground. The shaping of international law in the future could thus be directed to removing all possible inducements to neutrality.

It is doubtful, however, if this will be done designedly and for the laudable purpose of discouraging neutrality in the future, but there is a reasonable hope that from natural causes the questions will in fact be determined in favor of the rights of belligerents, and that, accordingly, the trend of international law in the future will be in the preferable direction. Nevertheless, it would be quite possible for Great Britain, for instance, in pressing the rights of belligerents, to insist to the utmost on the point that the rights of nations fighting in defence of the fundamental principles of international law must be regarded by international law as paramount, and that under such circumstances the right of a nation to remain neutral, as if the violation of international law by other states were none of its concern, is only a concession ex gratia. Such a position, if acquiesced in, would rapidly mould international opinion, and the sense of national honour would be enlisted in favour of intervention in every case where the public of a nation felt that an act of international injustice

had been perpetrated. In this direction even pacifist societies might do some good work. For years they have been toiling without success to produce in the public mind an unqualified and undiscriminating antipathy to war. If only they would cast out their net on the other side they might be better rewarded.

Further, a resolute effort might be made to prevent neutrals interfering in the terms of peace. It should be strenuously maintained that a nation in remaining neutral pleads that the area of the dispute is beyond the sphere of its influence. There is abundant evidence that the hope of being allowed a voice at the conclusion of war, and thus saving national honour, operates to restrain the public demand for intervention even when the sympathies of a nation run strongly in favour of the belligerents on one side or the other. It would be difficult to conceive a more preposterous claim. Yet, when the present war draws to a close and terms of peace come to be discussed, we may expect to hear states, whose sense of justice was unmoved by any violation of international law during the progress of the war, soliciting the most respectful hearing as to the precise terms to which the victors may be regarded as fairly and equitably entitled. Should not the victors then say: Stand back and let us speak with our enemies, who at least fought a brave fight. But you! What do you know of justice? The cold earth that covers our dead was more sympathetic than you.

However difficult the task of establishing some organization of states in their external relations and of procuring an adequate sanction for international law, the problem is similar in all essentials to that already solved by every civil community that has a legal constitution. This analogy was pointed out by Kant, but it appeals to practical statesmen just as much as to theorists. In a recent pamphlet Mr. Roosevelt reminds Americans of the times of anarchy in the rapidly growing and turbulent communities out West. "In such communities before there was a regular and fully organised police force there came an

interval during which the preservation of the peace depended upon the action of a single official, a sheriff or marshal, who, if the law was defied in arrogant fashion, summoned a posse comitatus composed of as many armed, thoroughly efficient, law-abiding citizens as was necessary to put a stop to the wrongdoing. Under these conditions each man had to keep himself armed and both able and willing to respond to the call of the peace officer; and, furthermore, if he had a shred of wisdom, he kept himself ready on an emergency to act on his own behalf if the peace officer did not or could not do his duty." This was the way wise men dealt with the situation, while foolish citizens contented themselves with "simply passing resolutions of disarmament without any power back of them."

Our own law still shows traces of these crude relations from which the existing organization of society has sprung. While the protection to be afforded to individuals whose freedom is violated is afforded through the medium of the state, and there is a properly constituted authority to deal with the matter, that authority must be regarded as ultimately deriving its sanction from the collective will of all individuals in the state, and as being in truth only the expression of that will. We must therefore regard the authorities as simply regulating and controlling the natural interference of all to prevent the wrongs of each. Hence anyone is liable to be called upon by the proper authority to assist in taking into custody any person who is resisting arrest, or to help to quell a riot. But, what is more significant, where "the danger is pressing and immediate," it is not even necessary to wait for authority. "Where a felony has been committed, or cannot otherwise be prevented, and from the circumstances of the case no opportunity is offered of obtaining a requisition from the proper authorities" the king's subjects "not only may, but are bound to do their utmost, of their own authority, to prevent the perpetration of outrage, to put down riot and tumult, and to preserve the lives and property of the

⁶ Mr. Roosevelt Speaks Out, p. 2.

people."⁷ These considerations by analogy, enable us to see that there is no force in the contention that neutrality should be observed by states so long as there is no international council or league of peace, or other properly constituted authority, to take action; because it is precisely the absence of such an authority that should impose a duty on every state to intervene on its own initiative if rights are clearly being violated.

These inferences seem so obvious that it is strange to find so acute and independent a thinker as Mr. Bertrand Russell, while relying on the same analogy, coming to precisely the opposite conclusion on the really vital point of individual action pending the constitution of a proper controlling authority. Our ultimate aim, he considers, should be "to form a League of Peace, which should undertake, in the event of a dispute, to offer mediation, and, if one party accepted mediation while the other refused it, to throw the whole of its armed support on the side of the party accepting mediation, while, if both parties refused mediation, the League should throw its weight against whichever party proved to be the aggressor. If a sufficient number of nations entered into such a league, they could make aggressive war obviously doomed to failure, and could thereby secure the cessation of war. It is precisely this way that private war has been brought to an end."8 But he has not much hope of the League being founded in the immediate future. So the vital question concerns what is to be done in the meantime. "English opponents of war will have to be content, at least for a time, with a more humble aim than the creation of a League of Peace. The only policy, in that case, which can secure that England, at any rate, shall not be involved in war, is the policy of strict non-intervention. This involves not only the avoidance of alliances nominally directed to maintaining the balance of power, but also abstention from the attrac-

 $^{^{7}}$ Per Lord C. J. Tindel, in his charge to the Bristol Grand Jury, on the 2nd Jan. 1832 (5 Car. & P. 261 n.).

⁸ War—The Offspring of Fear, pp. 11, 12.

tive Palmerstonian attitude of champions of right against oppression. When the Foreign Office desires to enter into a conflict, it can always, by selecting the facts to be revealed, and by inspiring its friends in the press, make our intervention appear as a defence of the oppressed against oppression or attack. The only security against a war-fever created by such methods is a fixed resolve to hold aloof, as the United States are now holding aloof, from any struggle not involving direct attack upon some portion of our Empire."

Let us analyse Mr. Russell's argument. He suggests that if only one side accepted mediation the league should support that side. But, if mediation means submission to arbitration, there is the difficulty which Mr. Russell himself points out in putting the case of Austria against Servia. "The Servians, it is true, were willing to submit to arbitration on this point, but the arbitration must have gone in their favour unless they were to be treated as outside the pale of civilised races."10 It is strange that in considering the merits of the present war Mr. Russell attaches no importance to a point which he suggests should form a determining principle for armed intervention on the part of all the nations in his League of Peace, whatever the racial or other sympathies of those nations might be. Conversely, it is strange that he should be satisfied that the League of Peace should invariably act on a principle which in the concrete case of the present war he insists is quite indecisive. Then, "if both parties refused mediation, the League should throw its weight against whichever party proved to be the aggressor." This assumes that one side or the other must always be distinctly the aggressor, though the whole object of the pamphlet is to prove the reverse. However, there certainly are cases in which one side is distinctly the aggressor. Is it not clear, then, that pending the formation of the league, states should on their own initiative act in the way they

⁹ Ibid, p. 13.

¹⁰ Ibid, p. 5, 6.

would be compelled to act if the league were formed? Should they not regard that as done which ought to be This is not Mr. Russell's conclusion. Even if the merits of a dispute are perfectly clear, and if there are three or four great powers not involved in the dispute, they must all act in precisely the opposite manner to that in which they would act if the league, which ought to be established, were there to decide what is ex hypothesi perfectly clear. It is difficult to understand what can have led Mr. Russell to defend the absurdities of this international red tape. Then, the policy of nonintervention is to secure "that England, at any rate, shall not be involved in war." This assumes that there are no aggressive wars and that England can never be attacked. Yet, a few lines lower down, he says that England must hold aloof from "any struggle not involving direct attack upon some portion of our Empire." The serious contemplation of the possibility of England holding aloof while some other portion of the Empire, say, Ireland or Canada, is being attacked illustrates the peculiar intellectual atmosphere into which members of these peace societies can think themselves when they get together in sufficient numbers. At any rate, England is to avoid all alliances, and, if she is attacked by any combination of powers and asks for intervention on the part of any other states, they are to reply that they cannot do anything until they have gone through the formality of establishing themselves into a league. Without the magic of a league, the nations of the world are to be powerless in the cause of right.

But Mr. Russell is himself obviously conscious that the analogy which he has adopted presses him to a conclusion the very reverse of that which he desires. He admits that the Palmerstonian attitude is attractive. But the objection is that the Foreign Office can so influence the press as always to "make our intervention appear as a defence of the oppressed against oppression or attack." But this contention that the public is completely under the influence of the press, which in turn is completely

under the influence of the Foreign Office, is in flat contradiction with the assumptions which must underlie Mr. Russell's energetic demand for democratic control. What is the use of democratic control as a substitute for secret diplomacy, if the public are, through the press, themselves controlled by the Foreign Office? But, apart from this it is not unreasonable to assume that a general desire to withstand aggression would influence the Foreign Office of a state that intervened without having any original interest in the dispute. And if such a desire cannot be assumed it cannot be hoped that the nations will ever unite to form a league of peace.

The truly "Great Illusion," which deceives most enthusiasts who devote themselves to the problem of preventing war, is the illusion that if the ultimate solution must be found in an effective international council, the first step to be taken must be to establish the international council. and the next step must be to make it effective. But there would be no difficulty whatever in merely setting up an international council. The problem of making such a council effective is the whole problem. The first step should be to produce conditions which will secure active intervention on the part of powers other than those originally The international council would then grow up from the necessities of the case. For the powers referred to would naturally insist on investigating the cause of the dispute, and would desire to confer together with a view to concerted action—it being to all their interest to combine on the same side, so as to make their intervention decisive and bring about as speedy a termination of the war as possible. An international council coming into existence under such conditions would begin by being effective, because its primary purpose would be to determine action. But an international council that came into existence without having its effectiveness secured to it would start as a merely academic body, and could never become anything else.

The real source of the illusion is a confusion between Vol. XXV.—No. 4.

the logical and chronological order of things. The advocates of proposals for putting an end to war assume that a complete and perfect scheme could be put into immediate operation. But if, instead of scattering pamphlets broadcast, which only advance arguments that have been urged without effect for over a century, they were to devote their attention to formulating the details of their scheme and drafting the precise terms of the international treaty upon which their council, with requisite functions and powers, is to be established, they would begin to realise the difficulties of the problem.

Such a scheme would have to provide for the action of intervening powers being determined on one or other of two principles. Either action would be made to follow the decision of some judicial tribunal, or it would have to be determined by a majority vote of representatives of the different powers.

In the latter case the different powers would in effect be placed under a federal parliament. But, in the present state of civilization, varying largely with different races, the notion of attempting a "federation of the world" is simply fantastic.

But, if action were made to depend on the decision of a judicial tribunal, the impartiality of the members of the tribunal would have to be above suspicion, and the code of international law to be interpreted and applied would have to be so clear and comprehensive that the court would always be practically unanimous. There seems no reasonable prospect of either of these conditions being fulfilled in the immediate future. As to a thoroughly comprehensive code of international law, it is only necessary to distinguish between the real and the avowed causes of most international disputes to see that they are frequently concerned with matters which could only be decided by an actual appeal to force, or by concessions in view of threats of force. In such cases a disinterested nation must obviously be allowed either to stand aloof, or at least, to choose its own side.

In fine, it must be apparent to anyone whose mind has not become unbalanced by the horrors of war, that pressure must be brought to bear on states to intervene individually on one side or the other long before any system of international relations can be realised under which it would be practicable for a judicial tribunal or an international council to dictate to them on which side they are to intervene, and, further, that even before such pressure could be exerted in sufficient strength to coerce every state to intervene in every dispute on one side or the other, conditions should be so moulded that the pressure is only of sufficient strength to make the more self-respecting and influential powers intervene in cases of the flagrant violation of the principles of international law.

Were this much accomplished, nations would hesitate to indulge in wanton attacks and flout international opinion, in the cynical belief that there exists no international force in the world but that which springs from a mere selfish regard for immediate material interests. The present war is due, more perhaps than anything else, to a gamble on neutrality, in which certain nations have staked everything on a cynical view of humanity. The prevalence of this cynicism has naturally created the fear in every nation that it may at any moment become the object of unprovoked attack, and that in the event of defeat there is no limit to the humiliation to which it may be subjected. When this fear is allayed by the conviction that at least some great powers regard themselves as bound, of their own initiative, to defend and uphold the sacred rights of mankind, the first step will have been taken on the long road that must eventually lead to the establishment of a more ambitious and adequate scheme for making war a continually averted calamity.

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